No. [redacted] 38

CITY BANK FARMERS TRUST COMPANY, Executor Under the Will of THOMAS B. CLARKE, Deceased,

Appellant,

vs.

WILLIAM A. SCHNADER, Attorney General of the Commonwealth of Pennsylvania, and LEON D. METZGER, Secretary of Revenue of the Commonwealth of Pennsylvania.

[redacted]

INDEX.

Subject Index.

	Page
Statement as to jurisdiction	1
Statutory provision sustaining jurisdiction	2
Statute of the State the validity of which is involved	2
Date of decree and date of application for appeal	3
Nature of case and ruling below	3
Cases believed to sustain jurisdiction	6

Table of Cases Cited.

City Bank Farmers Trust Co., etc., v. Schnader, etc., 54 Sup. Ct. Rep. 259	4
Clark v. Poor, 274 U. S. 554	6
Farmers Loan & Trust Co. v. Minnesota, 280 U. S. 204	4
First Nat'l Bank of Boston v. Maine, 284 U. S. 312	4
Frick v. Pennsylvania, 288 U. S. 473	4
Louis K. Liggett Company v. Baldridge, 278 U. S. 105	6
Moore v. Fidelity & Deposit Co., 272 U. S. 317	6
New York Central Railroad v. Miller, 202 U. S. 584	5
Safe Deposit & Trust Co. v. Virginia, 280 U. S. 83	4
Smith v. Wilson, 273 U. S. 388	6

Statutes Cited.

Act of the Pennsylvania Legislature of June 20, 1919, Section 1, P. L. 521; 72 P. S. 2301, as last amended by the Act of June 22, 1931, P. L. 690	2
Judicial Code, Section 266, as last amended by the Act of February 13, 1925, Chapter 229, 43 Stat. 936, 938 (28 U. S. C. 380)	2

IN THE DISTRICT COURT OF THE UNITED STATES

FOR THE EASTERN DISTRICT OF PENNSYLVANIA

SEPTEMBER TERM, 1932.

In Equity. No. 7395.

CITY BANK FARMERS TRUST COMPANY, EXECUTOR UNDER THE WILL OF THOMAS B. CLARKE, DECEASED,
Complainant,

vs.

THE HONORABLE WILLIAM A. SCHNADER, ATTORNEY GENERAL OF THE COMMONWEALTH OF PENNSYLVANIA AND THE HONORABLE LEON D. METZGER, SECRETARY OF REVENUE OF THE COMMONWEALTH OF PENNSYLVANIA.

Respondents.

STATEMENT AS TO JURISDICTION OF APPEAL.

(Filed Apr. 5, 1934.)

MAY IT PLEASE THE COURT:

The appellant, in support of the jurisdiction of the Supreme Court of the United States to review the above-entitled cause on appeal, respectfully represents:

A.

Statutory Provision Sustaining Jurisdiction.

Section 266 of the Judicial Code as last amended by the Act of February 13, 1925, Chapter 229, 43 Stat. 936, 938 (U. S. Code, Title 28, Sec. 380) relating to applications for an "interlocutory injunction suspending or restraining the enforcement, operation, or execution of any statute of a State by restraining the action of any officer of such State in the enforcement or execution of such statute" etc., provides that:

> "An appeal may be taken direct to the Supreme Court of the United States from the order granting or denying, after notice and hearing, an interlocutory injunction in such case. * * * The requirement respecting the presence of three judges shall also apply to the final hearing in such suit in the district court; and a direct appeal to the Supreme Court may be taken from a final decree granting or denying a permanent injunction in such suit."

B.

Statute of the State, the Validity of Which is Involved.

> "Section 1 of the Act of June 20, 1919, P. L. 521, 72 P. S. § 2301, as last amended by the Act of June 22, 1931, P. L. 690, of the State of Pennsylvania, provides in part as follows:
>
> "SECTION 1. Be it enacted, etc., That a tax shall be, and is hereby, imposed upon the transfer of any property, real or personal, or of any interest therein or income therefrom in trust or otherwise, to persons or corporations in the following cases:
>
> * * * * * * *

"(*b*) When the transfer is by will or intestate laws of real property within this Commonwealth, or of goods, wares, or merchandise within this Commonwealth, or of shares of stock of corporations of this Commonwealth or of national banking associations located in this Commonwealth, and the decedent was a nonresident of the Commonwealth at the time of his death."

C.

Date of Decree and Date of Application for Appeal.

The decree sought to be reviewed was entered on the 5th day of April, 1934.

The application for appeal was presented on the 5th day of April, 1934.

D.

Nature of Case and Ruling Below.

A New York resident, having made an accommodation loan of a collection of rare paintings to a Pennsylvania Museum for free exhibition to the public under an agreement that the same should be returned upon demand, and having died while the pictures were there on exhibition, the Secretary of Revenue and the Attorney General of Pennsylvania are proceeding to appraise, assess and collect an inheritance tax thereon under the alleged authority of the Pennsylvania Inheritance Tax statute. The executor, a New York Trust Company, applied for an interlocutory, and thereafter a final, injunction on the ground that the Pennsylvania statute, if it imposes such a tax, is unconstitutional, and if it does not, the acts of defendants are unconstitutional. The bill was framed so as to determine whether Pennsylvania or New York had the right to an

inheritance tax, it having been decided by recent decisions of this Court that only one State can impose an inheritance tax upon the transfer by death of specific property. *Farmers Loan & Trust Co.* v. *Minnesota,* 280 U. S. 204; *Safe Deposit & Trust Co.* v. *Virginia,* 280 U. S. 83; *First Natl. Bank of Boston* v. *Maine,* 284 U. S. 312; *Frick* v. *Pennsylvania,* 288 U. S. 473. The Tax Commission of the State of New York filed briefs as *amici curiæ* in all of the several hearings had.

Upon the first hearing before the District Court, sitting as a court of three judges pursuant to the provisions of Section 266 of the Judicial Code, the bill was dismissed on the ground that complainants had an adequate remedy at law. An appeal was taken to this Court, which reversed (54 S. Ct. 259) the lower court and remanded the cause with instructions to reinstate the bill and proceed to a hearing upon the merits. Thereupon, a final hearing was had upon the merits in the District Court and the bill dismissed by a divided court. This appeal is taken from said decree of dismissal.

The facts of the case were not in dispute, being as alleged in the pleadings and in a supplemental stipulation. The majority of the court held that, under the decisions of this Court, the pictures had an actual situs in Pennsylvania for inheritance tax purposes. The minority held that, under the decisions of this Court, the pictures had their tax situs in New York. The division of the court resulted from a difference of opinion as to what constitutes "actual situs" under the decisions of this Court; as to whether chattels are presumptively taxable at the domicile of the owner or at the place where the property happens to be at death; as to the legal importance of the time element involved in the length of the loan; and as to the legal effect of the pur-

pose of sending the pictures to Pennsylvania and of the agreement of the owner and Museum as to the return thereof. The minority opinion pointed out that this "is what is called a 'close case.' "

The important and as yet unsettled questions of law to be determined by this Court in the present appeal are:

(1) The respective rights of the several States to collect inheritance tax on chattels owned by a resident of one State but resting in another State at the moment of the owner's death.

(2) What constitutes the "actual situs" of chattels as that phrase is used by this Court in *Frick* v. *Commonwealth*, 268 U. S. 473, when applied to a temporary sojourn of chattels in a State other than that of the owner's domicile.

(3) Whether such "actual situs" is determined solely on the basis of length of stay or also upon the intent and purpose of the stay and similar elements.

(4) Whether, in determining the legal situs for inheritance tax of chattels, there shall be applied (as suggested by this Court in *New York Central Railroad* v. *Miller*, 202 U. S. 584, 597) the established rules of law for determining domicile; or, as held by the majority of the lower court, a new set of legal principles are to be evolved; and if so, what?

The importance of such questions to Pennsylvania, New York and the several States generally, as well as to the owners of works of art disposed to loan them for exhibition in other States and to the public, is apparent.

E.

Cases Believed to Sustain Jurisdiction.

The following decisions of the Supreme Court of the United States are believed to sustain jurisdiction of this appeal:

Clark v. *Poor,* 274 U. S. 554, 556;
Louis K. Liggett Company v. *Baldridge,* 278 U. S. 105;
Moore v. *Fidelity & Deposit Co.,* 272 U. S. 317, 320-321;
Smith v. *Wilson,* 273 U. S. 388.

We respectfully submit that this Court has jurisdiction of this appeal by virtue of Section 266 of the Judicial Code, as amended by the Act of February 13, 1925.

Respectfully submitted,

HENRY S. DRINKER, JR.,
LESLIE M. SWOPE,
Attorneys for Appellant.